

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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In the Matter of the Application of

LIQUOR SALESMEN'S UNION LOCAL 2D PENSION FUND,

Petitioner,

For an Order to compel a deposition and
discovery from,

BANK OF AMERICA CORPORATION,

regarding the identity of John Doe and/or Jane Doe,
being unknown to the Petitioner,

Respondent(s).
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Petitioners, Vincent Fyfe, Vincent Volpe, Martin Mann, Stephen Meresman,
Robert Lento and Matthew Mattassa, being the Trustees of the Liquor Salesmen's Union
Local 2D Pension Fund ("Pension Fund"), by their attorneys, O'Connor & Mangan, P.C., allege
as follows:

I. INTRODUCTION

1. By this Petition, made pursuant to Rules 27(a)(3) and 34(a)(1)(A) of the Federal Rules
of Civil Procedure, the Petitioner seeks a deposition of Respondent's Keeper of Records and
other discovery of books, records, documents and data, in Respondent's possession and control,

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U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK
VERIFIED PETITION

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MATSUMOTO, J.

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that are necessary for Petitioner's civil action under Sections 502(a)(3), 502(e)(1) and 502(f) of the Employee Retirement Income Security act of 1974, as amended ("ERISA"), 29 U.S.C. §§1132(a)(3), (e)(1) and (f).

2. By resolution, on March 24, 2012, the Trustees of the Pension Fund authorized that this Petition be filed with this Court to seek the deposition and other discovery of the Respondent.

II. THE PARTIES

3. Petitioner is an "employee benefit plan", established pursuant to §302(c)(5) of the Labor Management Relations Act of 1947, as amended ("LMRA"), 29 U.S.C. §186(c)(5), within the meaning of Sections 3(1), 3(2) and 3(3), and 502(d)(1) of ERISA, 29 U.S.C. §1002(1), (2) and (3), and 1132(d)(1), and is a multiemployer employee plan within the meaning of Section 3(37) of ERISA, 29 U.S.C. §1002(37). The principal office of the Petitioner, where the Pension Fund is administered, is located at 8402 18th Avenue, Brooklyn, New York 11214.

4. The purpose of the Pension Fund is to provide defined pension benefits to eligible participants, on whose behalf their employers had made contributions to the Pension Fund, pursuant to collective bargaining agreements by and between said employers and United Food and Commercial Workers Union, Local 2D.

5. Bank of America Corporation, hereinafter referred to as "the Respondent", is an American multinational banking and financial services corporation headquarters in Charlotte, North Carolina. The Respondent operates in all 50 states of the United States, as well as in the

District of Columbia. It has retail banking operations in New York State within the Counties of Kings, Queens, Nassau and Suffolk.

III. VENUE

6. The proceeding is properly venued in this Court as this is the district where the Pension Fund is administered. See Section 502(e)(2), 29 U.S.C. §1132(e)(2).

IV. BACKGROUND

7. Mortimer Abrams (“Abrams”) is a Pension Fund participant and has, since September 1, 1989, been a retiree receiving a, monthly, defined pension benefit in the sum of \$377.00 from the Pension Fund. Mr. Abrams currently resides at 17280 Boca Club Boulevard, #2208, Boca Raton, Florida 33487 (“Residence”).

8. On or about March 24, 2008, Mr. Abrams authorized the Pension Fund to have his monthly pension check automatically deposited into Account No. 898004916302 at the Bank of America (“BOA”) branch located at 17960 North Military Trail, Boca Raton, Florida 33496 (“Branch”). See Exhibit “A” annexed hereto.

9. On or about January 23, 2012, the Pension Fund, while reconciling its pension benefit accounts, found an error in the direct deposits made to the Branch for Abrams. For the period April 2008 through December 2011, the Pension Fund continued to mail a monthly check, in the sum of \$377.00, to Abrams’ Residence, while the Pension Fund’s bank, JP Morgan Chase,

continuously processed direct deposit checks, for the benefit of Abrams, which were deposited monthly into the BOA's Branch Account No. 89805000000.

10. The Pension Fund's Trustees were advised of these double benefit payments and authorized that an investigation begin and that an ERISA action be instituted, if appropriate. Petitioner expects to be a party to said ERISA action cognizable in a court of the United States, but the action is unable to be brought presently.

11. Abrams is afflicted with Alzheimer's Disease and his spouse has his power of attorney. She was communicated with by the Pension Fund's staff. She knows that the Pension Fund's monthly benefit check, in the sum of \$377.00, was, continuously, received at the Residence and deposited into Branch Account No. 898004916302, however, she knew nothing about the separate direct deposit payments to BOA Branch Account No. 89805000000.

12. The Pension Fund's efforts to obtain the identity of the person(s) or entity owning or assigned Account No. 89805000000 were unproductive due to BOA's "privacy" restrictions. The Pension Fund's staff and attorney were advised that the information that it sought regarding, Account No. 89805000000, is only obtainable by a court order served on BOA, Legal Order Processing, 5701 Horatio Street, Utica, New York 13502, Attn: Keeper of Records.

V. PRAYER

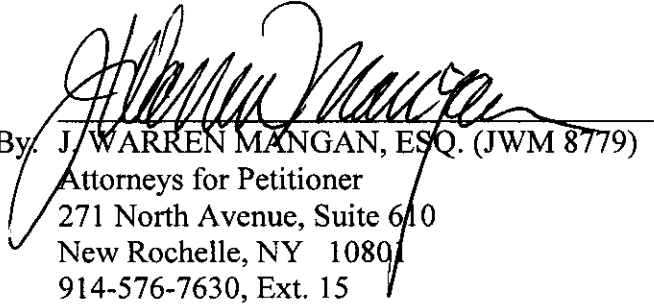
13. For the foregoing reasons, Petitioner asks the Court to order the Respondent to produce its Keeper of Records for an oral deposition and to produce for discovery all of its books, records, documents and other data relating to ownership (as well as deposits into,

transfers and/or assignments to/from and withdrawals from) Account No. 89805000000 at is Boca Raton branch located at 17960 North Military Trail, Boca Raton, Florida 33496 for the period on and after January 1, 2008.

Dated: May 21, 2012

Respectfully submitted,

O'CONNOR & MANGAN, P.C.


By: J. WARREN MANGAN, ESQ. (JWM 8779)
Attorneys for Petitioner
271 North Avenue, Suite 610
New Rochelle, NY 10801
914-576-7630, Ext. 15
Fax: 914-576-7682
Email: ocmlawyers@aol.com

VERIFICATION

Vincent Fyfe, being duly sworn, avers as follows:

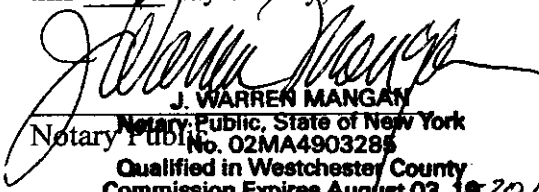
I am both the Chairman and a Trustee of Liquor Salesmen Union Local 2 Pension Fund, the Petitioner in this proceeding. I have reviewed the foregoing Petition and know its contents, which are true to my own knowledge gained by virtue of my positions as Chairman and Trustee of the Petitioner.

Dated: Brooklyn, New York
May 31, 2012



VINCENT FYFE

Sworn to before me
this 31 day of May, 2012



J. WARREN MANGAN
Notary Public, State of New York
No. 02MA4903285
Qualified in Westchester County
Commission Expires August 03, 2013

